

## REMARKS

Claims 1-20 were pending in the Application as of the Office Action of May 12, 2009. Claims 1, 12, and 14 are amended with this Response. Claims 13 and 15 are cancelled. Replacement Figures 1-12 are attached herewith. Applicant respectfully thanks the Examiner for indicating the Allowable Subject Matter of claim 20. The Examiner's objections and rejections will now be respectfully addressed in turn.

### Objection to the Figures

At page 2 of the Office Action, the Examiner objects to the Figures for allegedly failing to show "a flexible linkage configures as an endless linkage," as was set forth in the Original claim 13. In Response, Applicant respectfully cancels claim 13, and claim 15 that depends therefrom.

At page 3 of the Office Action, the Examiner goes on to object to the Figures for allegedly being dark and overly shaded. In Response, Applicant respectfully submits the Replacement Figures attached herewith.

### Objection to the Claims

Claim 1 is objected to for alleged informalities. In Response, Applicant respectfully amends claim 1.

### Rejections under 35 U.S.C. §103(a)

Claims 1-6, 8-12, 14, 16, and 18 have been rejected under 35 U.S.C. §103(a) as being obvious over United States Patent No. 3,055,523 to Wurn ("Wurn" hereinafter) in view of United States Patent No. 2,653,679 to Hamilton ("Hamilton" hereinafter). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the

skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant's claim 1 recites *inter alia*,

“a flexible linkage coupling the motor, main frame and sub-frame together such that the motor is operable to move the linkage to thereby extend or retract the sub-frame so that the foot portion is configured for both a lowering and elevating relative to said wheel.”

Applicant respectfully asserts that neither Wurn nor Hamilton, taken alone or in combination, teach a foot portion that is configured for ***both*** a lowering ***and*** an elevating relative to the wheel. On the contrary, Wurn (see Figure 5 in particular) teaches a foot portion 24 that *can only be lowered* relative to the wheel 16 (mounted to the main frame 2) and therefore not elevated relative to wheel 16 to load or unload an elevated load. Hamilton teaches a foot portion 6 that *can only be elevated* relative to wheel 2 (see figure 1), but cannot be lowered to ascend steps as shown in Figures 9 to 11 of the Applicant's Specification. For at least these reasons, Applicant respectfully asserts that the proposed combination of Wurn and Hamilton does not teach every element of Applicant's claims.

In fact, since Hamilton is in the non-analogous art of heavy duty lifting systems (as opposed to the art of hand truck systems taught in Wurn and Applicant's disclosure), an ascending of steps in an unreasonable and unlikely task for the Hamilton system due to the weight of the system and the weight of the cargo being moved by the system. As such, there is no suggestion or incentive found in the prior art that would motivate one of ordinary skill to modify Hamilton to include a foot portion that could be lowered to ascend steps as shown in Figures 9 to 11 of the Applicant's Specification.

In addition, MPEP 2143.01 states that “The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art **must** be considered to the extent that they are in analogous arts.” Applicant’s disclosure is in the art of hand trucks. As mentioned above, the Hamilton system lies in the unrelated, non-analogous art of heavy duty lifting systems. Accordingly, the Examiner has relied upon non-analogous art that is not pertinent to the art of Applicant’s disclosure. Applicant therefore submits that Hamilton is improperly cited as a reference that may be modified to teach elements Applicant’s claims.

Furthermore, under MPEP 2143.01 VI, “if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” With reference to this section of the MPEP, Applicant respectfully notes that the suggested combination of the Wurn hand truck with the Hamilton heavy lifting system would require a substantial reconstruction and redesign of the elements shown in Wurn (i.e. elements of a relatively light weight hand truck) as well as a change in the basic principle under which the Wurn hand truck construction was designed to operate. This is because hand trucks are operated by hand and are therefore light weight in nature and, in contrast thereto, heavy duty lifting systems (such as that taught in Hamilton) are comparatively heavy, not hand operable, and requiring of a sturdy base 1 and a plurality of wheels 2, 3 to support the industrial motor assembly 13. Additionally, the drive mechanism of Hamilton is merely suited to moving the foot portion 6 above the wheels 2, 3 and could not be readily incorporated into Wurn so that the foot portion can be lowered or elevated relative to the wheels without a substantial reconstruction thereof. As such, for at least the above reasons, the proposed combination of the Wurn hand truck with the Hamilton heavy lifting system would require a change in the principle operation of at least one of the Wurn and Hamilton system, rendering the proposed combination respectfully improper under MPEP 2143.01 VI.

Still further, as is stated in MPEP 2143.01 V, “If [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)”. With reference to this section of the MPEP, Applicant respectfully submits that incorporating the drive mechanism of Hamilton with the hand track of Wurn would render Wurn unsatisfactory owing to the weight of the drive mechanism.

For at least the reasons set forth above, Applicant respectfully asserts that *prima facie* obviousness does not exist with regards to claims 1-6, 8-12, 14, 16, and 18 in view of the proposed combination of Wurn and Hamilton.

Claims 7 has been rejected under 35 U.S.C. §103(a) as being obvious over Wurn in view of Hamilton and United States Patent No. 3,968,974 to Weltzel. Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant respectfully notes that claim 7 depends from claim 1. As such for at least the reasons set forth above, claim 7 is not *prima facie* obvious over the proposed combination of Wurn and Hamilton. As Wetzel does not remedy the deficiencies of Wurn and Hamilton, the proposed combination of Wurn, Hamilton, and Wetzel does not teach every element of Applicant’s claim 7. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claim 7 with respect to the proposed combination of Wurn, Hamilton, and Wetzel. Since the proposed combination of Wurn, Hamilton, and Wetzel fails to teach or suggest all of the limitations of claims Wurn,

Hamilton, and Wetzel, and since the proposed combination of at least Wurn and Hamilton is improper under MPEP 2143.01, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Claims 13 and 15 have been rejected under 35 U.S.C. §103(a) as being obvious over Wurn in view of Hamilton and United States Patent No. 3,896,904 to Walker. Applicant respectfully traverses this rejection. Though claims 13 and 15 have been canceled, Applicant respectfully points out that claim 14 now includes elements similar to that which was previously claimed in claim 15. As such, claim 14 will now be addressed in view of the above rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant respectfully notes that claim 14 depends from claim 1. As such for at least the reasons set forth above, claim 14 is not *prima facie* obvious over the proposed combination of Wurn and Hamilton. As Walker does not remedy the deficiencies of Wurn and Hamilton, and does not teach flexible linkage is trained around two rotatable members with two ends secured relative to the sub-frame, the proposed combination of Wurn, Hamilton, and Walker does not teach every element of Applicant's claim 14. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claim 14 with respect to the proposed combination of Wurn, Hamilton, and Walker. Since the proposed combination of Wurn, Hamilton, and Walker fails to teach or suggest all of the limitations of claims Wurn, Hamilton, and Walker, and since the proposed combination of at least Wurn and Hamilton is improper under MPEP 2143.01,

clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Claim 17 has been rejected under 35 U.S.C. §103(a) as being obvious over Wurn in view of Hamilton and United States Patent No. 7,457,727 to Tolly. Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant respectfully notes that claim 17 depends from claim 1. As such for at least the reasons set forth above, claim 14 is not *prima facie* obvious over the proposed combination of Wurn and Hamilton. As Tolly does not remedy the deficiencies of Wurn and Hamilton, and does not teach a take up of slack in a flexible linkage (on the contrary, at column 7, lines 25-45 Tolly teaches a biasing means against a loaded platform 106), the proposed combination of Wurn, Hamilton, and Tolly does not teach every element of Applicant's claim 17. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claim 17 with respect to the proposed combination of Wurn, Hamilton, and Tolly. Since the proposed combination of Wurn, Hamilton, and Tolly fails to teach or suggest all of the limitations of claims Wurn, Hamilton, and Tolly, and since the proposed combination of at least Wurn and Hamilton is improper under MPEP 2143.01, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Claims 19 has been rejected under 35 U.S.C. §103(a) as being obvious over Wurn in view of Hamilton and United States Patent No. 7,002,083 to Simons. Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant respectfully notes that claim 19 depends from claim 1. As such for at least the reasons set forth above, claim 19 is not *prima facie* obvious over the proposed combination of Wurn and Hamilton. As Simmons does not remedy the deficiencies of Wurn and Hamilton, the proposed combination of Wurn, Hamilton, and Simmons does not teach every element of Applicant's claim 19. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claim 19 with respect to the proposed combination of Wurn, Hamilton, and Simmons. Since the proposed combination of Wurn, Hamilton, and Simmons fails to teach or suggest all of the limitations of claims Wurn, Hamilton, and Simmons, and since the proposed combination of at least Wurn and Hamilton is improper under MPEP 2143.01, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Conclusion

Applicant believes that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for any extension of time under 37 C.F.R. 1.136(a) or 1.136(b) that may be necessary for entry and consideration of the present Reply.

If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact applicant's attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application.

Respectfully submitted,

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